

**MINUTES FOR THE COURT OF APPEAL  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

**February 18, 2009**

DIVISION ONE

Court convened at 9:00 a.m.

Present: Mallano, P.J., Rothschild, J., Weisberg, J. (Assigned), Bauer, J. (Assigned) and S. Stahl, Deputy Clerk.

B206066      Oravec v. New York Life Insurance Co.

Argument waived, cause submitted.

B206650      Stith  
                 v.  
                 Colella

Merits:

Argued by Richard G. Becker for respondent and no appearance for appellant. Cause submitted.

B202613      Maldague  
                 v.  
                 Castro et al.

Merits:

Argued by Evan D. Marshall for appellant and by Charles R. Messer for respondents. Cause submitted.

DIVISION ONE (continued)

B206249     Spiegel Development, Inc.  
              v.  
              Martinez et al.

Merits:

Argued by Arthur Carvalho for appellant and by David G. Meyer for respondents. Cause submitted.

B204886     Kim  
              v.  
              Kim

Merits:

Argued by Fred E. Schulcz for appellant and by Merritt L. McKeon for respondent. Cause submitted.

B208350     Kurdoglayan  
              v.  
              Baghdassarians et al.

Merits:

Argued by Richard Marcus for appellants and by Eugene S. Alkana for respondent. Cause submitted.

B199227     MacAteer  
              v.  
              Parr Contracting Company  
              Martin Bros. / Marcowall, Inc.

Merits:

Argued by Judith M. Tishkoff for appellant and by Kimberly M. Amick for respondent. Cause submitted.

February 18, 2009 (Continued)

DIVISION ONE (continued)

B202315     In re Robert de la Barcena  
B203772     on  
              Habeas Corpus.

Merits:

On the Court's own motion, these matters are consolidated for the purpose of oral argument and opinion. Argued by Michael Staris and Marilee Marshall for petitioner and by Lora Fox Martin, Deputy Attorney General for respondent. Cause submitted.

B202811     Hampton-Stein  
              v.  
              West Central Produce, Inc. et al.

Merits:

Argued by Joseph C. Maher for appellant and by Alex W. Craigie for respondents. Cause submitted.

B199998     Giammarrusco  
              v.  
              Simon

Merits:

Argued by Michael A. Greene for appellant and by Terrence M. Franklin and Kenneth S. Wolf for respondent. Cause submitted.

Court recessed.

Court reconvened at 11:21 a.m.

Present: Mallano, P.J., Rothschild, J., Weisberg, J. (Assigned), Bauer, J. (Assigned) and S. Stahl, Deputy Clerk.

DIVISION ONE (continued)

B203965     Tarkington, et al.  
              v.  
              CUIAB, et al.

Merits:  
Argued by Robert S. Remar for appellants and by Mark D. Kemple for respondents. Cause submitted.

B206089     Carter  
              v.  
              James

Merits:  
Argued by Odessa M. Carter appellant in propria persona and by Richard R. Keavney for respondent. Cause submitted.

B202617     Freedman et al.  
              v.  
              State Farm Insurance Company

Merits:  
Argued by Evan D. Marshall for appellants and by James R. Robie for respondent. Cause submitted.

Court recessed.

Court reconvened at 12:59 p.m.

Present: Mallano, P.J., Rothschild, J., Weisberg, J. (Assigned), Bauer, J. (Assigned) and S. Stahl, Deputy Clerk.

B203317     Franco  
              v.  
              Athens Disposal Company, Inc.

Merits:  
Argued by Thomas S. Campbell for appellant and by Kyle D. Brown for respondent. Cause submitted.

DIVISION ONE (continued)

B183545     Dahms  
              v.  
              Downtown Pomona Property et al.

Merits:  
Argued by Tony J. Tanke for appellant and by Scott E. Nichols for  
respondents. Cause submitted.

B200859     Pincay, Jr.  
              v.  
              Huntington Ambulance

Merits:  
Argued by Roy G. Weatherup for appellant and by Neil Papiano for  
respondent. Cause submitted.

Court adjourned.

B208900     In re Robert Rosenkrantz                (Not for Publication)  
              On  
              Habeas Corpus

The order under review is reversed.

Mallano, P.J.

I concur:     Bauer, J. (Assigned)  
I dissent:     Rothschild, J. (Opinion)

February 18, 2009 (Continued)

DIVISION TWO

B207128      People                                  (Not for Publication)  
v.  
Gonzalez, et al.

The Court:

The judgment is affirmed.

Doi Todd, Acting P.J., Ashmann-Gerst, J., Chavez, J.

DIVISION THREE

B204581      People                                  (Not for Publication)  
v.  
Brandon Noosbond

The judgment is affirmed.

Croskey, Acting P.J.

We concur:   Kitching, J.  
                      Aldrich, J.

B207965      People                                  (Not for Publication)  
v.  
William Little Anderson

The judgment is affirmed.

Aldrich, J.

We concur: Klein, P.J.  
Croskey, J.

### DIVISION THREE (continued)

B206236 Morris (Not for Publication)  
v.  
Southern California Edison Company

The summary judgment is reversed. Costs on appeal to plaintiff.

Croskey, Acting P.J.

We concur:   Kitching, J.  
                      Aldrich, J.

B211075      Los Angeles County, D.C.F.S.      (Not for Publication)  
v.  
D.A. and R.S.

The order terminating parental rights is affirmed.

Croskey, Acting P.J.

We concur:   Kitching, J.  
                      Aldrich, J.

B205879 Pasadena Residents for A Healthy Environment (Not for Publication)  
v.  
City of Pasadena  
La Salle High School of Pasadena, Inc.

The judgment is affirmed. The Residents shall bear costs on appeal.

Klein, P.J.

We concur:   Croskey, J.  
                      Kitching, J.

February 18, 2009 (Continued)

DIVISION FOUR

B207520 People v. Rivas (Not for Publication)

The judgment is affirmed.

Epstein, P.J.

We concur: Willhite, J.  
Manella, J.

DIVISION FIVE

B210169      Myer Sankary      (Not for Publication)  
v.  
Nina Ringgold

We find Nina Ringgold to be a vexatious litigant and will henceforth be subject to a prefiling order. The appeal is dismissed. Myer J. Sankary as the Successor Trustee of the Aubry Family Trust and Andre-Paul Chaussier as the Successor Trustee of the Summers Family Trust shall recover their costs incurred on appeal from Nina Ringgold.

Turner, P.J.

We concur:   Armstrong, J.  
                      Flier, J. (Assigned)



DIVISION FIVE (continued)

B208598      Los Angeles County, D.C.F.S.      (Not for Publication)  
v.  
E.H.  
In re H.W., a Person Coming Under the Juvenile Court Law

The order denying the section 388 petition is conditionally reversed and the cause is remanded solely to ensure compliance with the Indian Child Welfare Act as discussed in the body of this opinion.

Turner, P.J.

We concur:   Mosk, J.  
                  Kriegler, J.

B204765      Michele Dietz                              (Not for Publication)  
v.  
Healthmarkets USA et al

We affirm the trial court's dismissal of defendants HMI, HMLMG, and Hughes. The trial court did not rule on Dietz's request to conduct jurisdictional discovery as to SAS, and we return the matter to the trial court for proceedings consistent with this opinion. The trial court properly sustained the demurrers without leave to amend to the causes of action for breach of fiduciary duty, intentional infliction of emotional distress, and violation of the Consumer Legal Remedies Act. Dietz alleged sufficient facts against Wilson to proceed with a fraud action. There is a reasonable possibility that she can amend to seek damages based on fraud as to NASE, Mega, and the Quinn and Mack defendants, and the matter is remanded to the trial court for that purpose. Similarly, Dietz alleged sufficient facts against Wilson to proceed on a negligence theory. She may be able to amend to allege a negligence cause of action against Mega s well. The trial court properly sustained without leave to amend demurrers by NASE and the Quinn and Mack defendants to the negligence cause of action. Defendants HMI, HMLMG, and Hughes are entitled to costs on appeal. Otherwise, the parties are to bear their own costs on appeal.

Dunning, J., (Assigned)

We concur:   Turner, P.J.  
                  Kriegler, J.

DIVISION SIX

B207324      In re Linda Lee Smith                      (Not for Publication)  
                 On  
                 Habeas Corpus

The order of the superior court is reversed.

Yegan, Acting P.J.

I concur:      Coffee, J.  
I dissent:      Perren, J. (Opinion)

B202501      People    (Not for Publication)  
                 v.  
                 Gomez

The judgment is affirmed.

Gilbert, P.J.

We concur:      Yegan, J.  
                         Coffee, J.

B199032      People    (Not for Publication)  
                 v.  
                 Arellanes

We modify the judgment to strike the 15-years-to-life gang enhancement for count 1; modify the gang enhancement from five years to three years for count 2; and award 43 days of presentence conduct credit. The trial court shall amend the abstract of judgment accordingly, and forward the amended abstract to the Department of Corrections. We otherwise affirm.

Gilbert, P.J.

We concur:      Coffee, J.  
                         Perren, J.

## DIVISION SIX (continued)

B200639      Will  
v.  
Tinsley

Filed order denying petition for rehearing.

B196755      Stevens  
v.  
Vons Companies

Filed order modifying opinion. Petition for rehearing is denied. (No change in the judgment)

B199364      Safeco Insurance Company of America  
v.  
Parks

Filed order denying petition for rehearing.

## DIVISION SEVEN

B203212      Chang      (Not for Publication)  
v.  
Wei

The judgment is reversed. Chang is awarded his costs on appeal.

Jackson, J.

We concur: Woods, Acting P.J.  
Zelon, J.

February 18, 2009 (Continued)

## DIVISION SEVEN (continued)

B204182      Drake      (Not for Publication)  
v.  
City of Los Angeles

The judgment is affirmed. Defendant is to recover its costs on appeal.

Jackson, J.

We concur: Woods, Acting P.J.  
Zelon, J.

B199983      Stites  
v.  
Promus Hotel Corp.

Filed order denying petition for rehearing.

B198217      Sanai  
B202787      v.  
                 Saltz, et al.

Filed order modifying opinion. Petitions for rehearing are denied. (No change in the judgment)

## DIVISION EIGHT

B202219      People      (Not for Publication)  
v.  
Edgar Bautista

The judgment is affirmed.

O'Neill, J. (Assigned)

We concur: Rubin, Acting P.J.  
Bigelow, J.

February 18, 2009 (Continued)

DIVISION SEVEN (continued)

B207361     Jeffrey C. Brown, as Trustee etc., (Not for Publication)  
               v.  
               Kenneth Noel Marinos

The judgment is affirmed. Respondent is to recover his costs on appeal.

Flier, Acting P.J.

We concur: Bigelow, J.  
               O'Neill, J. (Assigned)